

No. 13734

---

United States  
Court of Appeals  
For the Ninth Circuit.

---

UNITED STATES OF AMERICA,  
Appellant,  
vs.

THE ALBERTSON COMPANY, a Corporation,  
Appellee.

---

Supplemental  
Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

SEP 25 1953

PAUL H. O'BRIEN



No. 13734

---

United States  
Court of Appeals  
For the Ninth Circuit.

---

UNITED STATES OF AMERICA,  
Appellant,  
vs.  
THE ALBERTSON COMPANY, a Corporation,  
Appellee.

---

Supplemental  
Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division.



United States District Court for the Southern  
District of California, Central Division

Civil No. 11960-PH

THE ALBERTSON COMPANY, a Corporation,  
Plaintiff-Appellee,

vs.

UNITED STATES OF AMERICA,  
Defendant-Appellant.

STIPULATION FOR DESIGNATION, CER-  
TIFICATION AND TRANSMITTAL OF  
SUPPLEMENTAL RECORD ON APPEAL

(Fed. R. Civ. P. 75(h))

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel of record, as follows:

1. That a Minute Order of Court dated August 15, 1952, prepared by the Court and mailed to counsel at that time, did not then become a part of records of the Court, but that by Minute Order dated May 13, 1953, the Court entered said Minute Order nunc pro tunc August 15, 1952.

2. The Minute Order entered nunc pro tunc August 15, 1952, was not included in the original Designation of Record on Appeal, or certified or transmitted to the Court of Appeals.

3. Defendant-Appellant, United States of America, hereby designates as supplemental record on appeal the minutes of Court dated May 13, 1953,

which includes the Minute Order entered nunc pro tunc August 15, 1952, and this Stipulation.

4. Pursuant to Federal Rule of Civil Procedure 75(h), the Clerk is requested to certify and transmit to the Court of Appeals the supplemental record on appeal designated herein by defendant-appellant.

Dated: This 15th day of May, 1953.

WALTER S. BINNS,  
United States Attorney;

E. H. MITCHELL, and  
EDWARD R. McHALE,  
Assistant U.S. Attorneys;

EUGENE HARPOLE,  
Special Attorney, Bureau of  
Internal Revenue;

/s/ EDWARD R. McHALE,  
Attorneys for Defendant-  
Appellant.

LATHAM & WATKINS,  
By /s/ JUSTIN H. PECK, JR.,  
Counsel for Plaintiff-  
Appellee.

[Title of District Court and Cause.]

MINUTES OF THE COURT—MAY 13, 1953,  
NUNC PRO TUNC 8/15/52

Proceedings: Good cause appearing therefor, It Is by the Court Ordered that the minute order of the Court, prepared by Judge Hall and dated Aug. 15, 1952, at Los Angeles, Calif., copies of which were mailed to counsel at that time, be entered in the minutes of this court, nunc pro tunc, August 15, 1952, which minute order is as follows, to wit:

“United States District Court, Southern District  
of California, Central Division

“No. 11,960-PH-Civil

“THE ALBERTSON COMPANY, a Corporation,  
“Plaintiff,

“vs.

“UNITED STATES OF AMERICA,  
“Defendant.

“MINUTES OF THE COURT DATE:

“AUG. 15, 1952

“At: Los Angeles, Calif.

“Present: The Hon. Peirson M. Hall,  
District Judge;

“Deputy Clerk: Francis E. Cross.

“Proceedings: Filed Stipulation of Facts.

“Ruling: The copies of briefs filed have been helpful, but the questions appear to me to be simple.

“Both the taxpayer and the Commissioner of Internal Revenue clearly made a mistake of law

when the deductions were made and allowed after audit by the Internal Revenue Bureau, for the years 1923-1928. *Magruder v. Supplee*, (1942), 316 U.S. 394. It is equally clear that the statute of limitations has long since run against the Commissioner of Internal Revenue to attempt to collect those wrongly deducted items. And Sections 3770(a)(2) and 3775(a) are also clear in precluding any attempt by the Commissioner of Internal Revenue to collect those wrongfully deducted items after the statute of limitations has run. Judgment will, therefore, be for the plaintiff, who will prepare Findings and Judgment under the rules.”

[Seal]

EDMUND L. SMITH,  
Clerk.

FRANCIS E. CROSS,  
Deputy Clerk.

A True Copy May 25, 1953.

---

[Endorsed]: No. 13734. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. The Albertson Company, a Corporation, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed May 27, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.